

SUPERIOR COURT
YAVAPAI COUNTY, ARIZONA

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BY: Kelly Gresham

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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF YAVAPAI

STATE OF ARIZONA

Plaintiff,

vs.

STEVEN CARROLL DEMOCKER

Defendant.

No. P1300CR201001325

REPLY TO STATE'S RESPONSE TO
DEFENDANT'S MOTION TO MODIFY
RELEASE CONDITIONS

COMES NOW THE DEFENDANT, by and through his attorney undersigned, and respectfully Replies to the state's Response to the Defendant's Motion to Modify Release Conditions.

MEMORANDUM

The state argues that Defendant did not claim the existence of material facts not previously presented to the Court. This is simply not the case. One of the material new facts that the Defendant lists is that Mr. DeMocker has been in solitary confinement for the past six months. He is locked in his cell 23 ½ hours a day. His confinement conditions are beginning to affect Mr. DeMocker's mental stability.

The state, in its Response, quotes the following from *Arpaio v. Baca*, 217 Ariz. 570, 177 P.3d 312 (App. 2008): "[A]bsent any constitutional violations with regard to prisoners, the judiciary has no authority to usurp the functions of the executive branch." It is the constitutional violations of his current confinement that the Defendant is requesting this Court to cure. In fact, the Arizona Supreme Court in *Arpaio v. Baca* did state that the

1 Sherriff cannot significantly interfere with or unreasonably burden the exercise of a
2 Defendant's Sixth Amendment rights regardless whether the justification for doing so is
3 based upon security concerns or financial considerations. *Arpaio v. Baca*, 217 Ariz. 570,
4 580, 177 P.3d 312, 322 (App. 2008).

5 Mr. DeMocker's current confinement is affecting his ability to assist in his own
6 defense. His current confinement of being locked in his cell 23 ½ hours a day is
7 negatively affecting Mr. DeMocker's mental state. So much so, in fact, that Defense
8 counsel has concerns as to whether Mr. DeMocker is going to be able to assist in his own
9 defense if his current confinement conditions do not change.

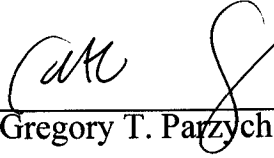
10 The state, in its Response, spends a significant amount of time on a recitation of the
11 state's version of its allegations in this case. The state's factual assertions are mere
12 allegations -- mostly hyperbole -- at this point and the Defense will address all of the state's
13 assertions at trial. The state boldly proclaimed that "all of defendant's defenses to the
14 murder of Carol Kennedy have been eliminated." (Response, pg. 2). Hyperbole aside,
15 what does that have to do with Rule 7.2, Arizona Rules of Criminal Procedure?

16 And before the state gets too carried away with its "eliminated defenses" posturing,
17 there are significant immutable facts the state does not want to acknowledge. Consider
18 the state's new claim that Mr. 603 has been identified, "as the previous autopsy." (*Id.*).
19 Mr. 603, whose DNA was found under Ms. Kennedy's fingernails, *still* is not Steve
20 DeMocker. The most powerful facts remain intact. The state cannot place the Defendant at
21 the scene of the crime: No DNA, no blood, no fingerprints or other biological evidence,
22 and no confession. Importantly, these facts will never change – no new evidence will
23 surface that could place him at the scene of the crime – because he was not there and did
24 not murder Carol Kennedy. *That* is what is known as a defense.

25 The purpose of Defendant's Motion to Modify Release conditions is to show the
26 Court that Mr. DeMocker's confinement conditions significantly interfere and
27 unreasonably burden his Sixth Amendment Rights. Defendant's Motion to Modify Release
28

1 Conditions seeks to cure this Sixth Amendment infringement. This Court can protect the
2 Defendant's Rights by significantly reducing the bond. In addition, the Defendant will
3 submit to GPS monitoring.

4 Respectfully submitted this 26 day of April, 2011.

5
6 By 
7 Gregory T. Parzych

8 Original of the foregoing pleading
9 filed this 26 day of April, 2011, to:

10 Clerk of Court
11 Yavapai County Superior Court
12 120 South Cortez St.
13 Prescott, Arizona 86303

14 The Honorable Warren R. Darrow
15 Jeffrey Paupore, Steve Young, Office of the Yavapai County Attorney
16 The Defendant

17 By 
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